IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5245 OF 2007

Vasant Parasharam Yadav & Anr. .. Petitioners

Versus

Vyankat Madhavrao Pawar & Anr. .. Respondents

Mr.Dilip Bodke for petitioners

Mr.S.S.Kulkarni for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th November 2007

P.C.

. Heard Mr.Bodke for petitioner and Mr.Kulkarni for respondents. Perused the order of the lower appellate court which interferes with the refusal of the interim injunction by the

trial court.

2. The lower appellate court has found that the trial court has virtually non suited the respondent - original plaintiff. The suit was for protecting the possession. An interim injunction was prayed on the basis that physical possession was never handed over to the respondents despite a sale deed being executed in 1981. Reliance was placed amongst other things upon proceedings which were initiated by the present petitioners themselves to remove names of respondents, their predecessors from the "other rights" column. Those proceedings have not gained finality as the appeal against the order passed by the authority concerned is pending before the S.D.O. as observed. As against the only affidavit of a person who is not even a resident of Kadegaon, the respondents have produced as many as seven affidavits of the cultivators of the adjoining lands who stated

that respondents are in physical possession of the suit land despite sale deed being executed. These are findings of fact inasmuch as execution of the sale deed and recital therein about possession, still, in the year 2003 proceedings were initiated to delete the names of concerned parties from other rights column. The tentative finding of the lower appellate court shows that it has performed its duty as a appellate court to interfere with a patently perverse and erroneous order of the trial court at prima facie stage. The elaborate discussion by the lower appellate court was necessitated only to appreciate the fact that the physical possession was never handed over to the petitioners before me. In paras 16 to 24 of the impugned order, the lower appellate court has adverted to necessary materials which are to be gone into at this prima facie stage. In these circumstances, I am not inclined to accept the argument of Mr.Bodke that the order under challenge is perverse or suffers

from patent error so as to justify this Court's interference under Article 227 of the Constitution of India.

3. This is a suit which is filed by two senior citizens. All that they requested during the course of its pendency is that if they are in physical possession, the same should not be disturbed, save and except, by due process of law, nor the property be alienated by the present petitioners on the strength of the sale deed further. Mr.Bodke does not challenge that part of the order of the lower appellate court which restrains petitioners from alienating the property during the pendency of the suit. However according to petitioners, from 1st September 2004 they are in physical possession. That aspect has not been held to be proved even prima facie by the lower appellate court, after adverting to all necessary material.

4. This is not a court of further appeal. In such circumstances, there is no warrant for entertaining this petition which is summarily dismissed. Ad-interim order stands vacated forthwith. In the circumstances of this case, interest of justice would be sub-served if the trial court is directed to hear and decide the suit as expeditiously as possible and within a period of six months from today. All observations of the lower appellate court are made during the course of disposal of the interim application and shall not bind the trial court while deciding the matter finally. The trial court shall decide the same uninfluenced by any observations made by the lower appellate court or this Court.

(S.C.Dharmadhikari, J)